



40 Grace appeals ruling on Libby cleanup bill

MISSOULA (AP) — W.R. Grace & Co. has appealed a federal judge's ruling that it must pay the Environmental Protection Agency the full \$54.5 million for asbestos cleanup in Libby, along with any future costs.

"This case represents a textbook example of an administrative agency run amok," Grace attorneys wrote in a brief filed Monday with the 9th U.S. Circuit Court of Appeals.

An attorney representing the EPA said the agency would respond in its own brief in June.

The appeal, which was not unexpected, is the latest round in the lawsuit the EPA filed against Grace in March 2001 to recover cleanup costs in the area, which the EPA has declared a Superfund site.

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Grace appeals ruling that it must pay for \$54 million cleanup

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Company attorneys argue that U.S. District Judge Donald Molloy erred when he ordered Grace to pay the EPA \$54.5 million to cover the agency's Libby costs through the end of 2001, and also erred when he found the company liable for future EPA expenses in areas of Libby covered by the lawsuit.

Before Molloy's ruling, W.R. Grace and a subsidiary had already agreed to pay nearly \$33 million for work done from November 1999 through December 2001, but Grace disputed another \$21.5 million in costs.

The EPA arrived in Libby in November 1999, after national news reports first linked asbestos contamination from a vermiculite mine just outside

town to the deaths of nearly 200 people and illness in hundreds more. Grace bought the mining operation — which once supplied more than 80 percent of the world's vermiculite — in 1963 and shut it down in 1990.

The vermiculite ore from the Libby mine was contaminated with tremolite asbestos. People who have been exposed to the asbestos fibers often don't show signs of lung disease for 10 to 40 years.

In its brief Monday, the company concedes there is "no question and Grace does not deny, that workplace conditions at the Libby mill from the 1930s until the installation of the wet mill in 1974 were dangerous, and tragically caused or contributed to disease and/or death as a result of asbestos exposure."

But the company denies that contamination in Libby in 1999 represented an emergency requiring and immediate and more expensive response.

Under normal remediation rules, the EPA would have followed a different, slower — and possibly less expensive — course in cleaning up the town, the brief argues.

"The United States essentially seeks to force Grace to hand EPA a blank check to spend money at will in Libby," the brief says. Company attorneys argue that the crisis was one of public relations following the 1999 news reports, not public health.

"The agency not only had no incentive to choose a rational or cost-effective response, but a perverse incentive to overprotect against risk," the brief said.

In his December 2002 order, Molloy wrote that he was satisfied that the EPA had considered its options for Libby and said it was within the agency's discretion to decide the asbestos contamination in Libby was an emergency in need of immediate response.